IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

(1) Writ Petition No. 6590 of 2004

Nasik Mahanagarpalika Shramik Sangh ..Petitioner

vs.

1. Nasik Municipal Corporation and others ..Respondents

Shri Bhavesh Parmar with Smt.Vijaya Jagtap for petitioner
Shri V.A.Gangal for respondent no.1
Shri V.P.Malvankar, A.G.P. for respondent no.2(a) and (b)

(2) Writ Petition No. 7006 of 2004

Balu Hiraman Donde & Ors. ..Petitioners

vs.

Municipal Corporation of Nashik Nashik ...Respondents

Shri K.K.Singhavi with Shri R.V.Govilkar for petitioners.
Shri V.A.Gangal for respondent.

CORAM: A.P.SHAH
S.U.KAMDAR JJ.
7th Setember, 2004

P.C.

1. Rule is issued on both the petitions.

2. Learned Counsel appearing for the respondents waive service. By consent, petitions are taken up for hearing.

3. The petitioner in Writ Petition No. 6590 of

2004 is a registered trade union representing the contract workers engaged in Ghantagadi project of Nashik Municipal Corporation. By this petition, the petitioner Union is seeking an appropriate writ, direction or order directing the Respondent no.1 Nashik Municipal Corporation to give priority in employment to the workers set out at Exh.A to the petition in accordance with the Circular dated 6th January, 2001, through any contractor engaged by it for the purpose of Ghantagadi activities. The petitioner Union is also seeking a direction to the concerned authorities to ensure implementation of the relevant labour laws so that the benefits thereunder are provided to the workers. The petitioner Union has claimed that the workers whose names are set out at Exh.A were employed in Ghantagadi project right from 1996. The Ghantagadi activity has been started by the Corporation for collecting garbage and is carried out by collection on door to door basis. This work was initially carried out by regular and permanent workmen of the Corporation. Some time in1996 the Corporation decided to get this work done through the contract workers. According to the petitioner Union, the workers enlisted at Exh.A were continuously employed for Ghantagadi activities right 1996 till August, 2003. However, when the workers started demanding the minimum wages as per Notification

issued by the State Govt. dated 15th February, 2003 the contractors refused work to the petition workers and hired a fresh set of workers from August, 2003.

4. In 2001, these workers had raised an industrial dispute against the respondent Corporation and a reference is pending for adjudication before the Industrial Tribunal, Nashik. In this reference the workers have inter alia raised a demand that all the contract workers working on Ghantagadi project be confirmed as permanent workmen of the Corporation and the list of contract workers be prepared and such contract workers be given preference for fresh recruitment in Nashik Municipal Corporation. We may, however, clarify that in the present petition the Union is not pressing for its demand for absorption of the workmen and that demand is the subject matter of the pending reference. On 6th November, 2001, the Nashik Municipal Corporation issued a Circular and material portion of the said Circular reads as follows:

> On 3.11.2001 a joint meeting of Hon'ble Municipal Commissioner, Nashik Municipal Corporation, Asstt.Commissioner of Labour, Maharashtra State, Nashik, Standing

Committee Chairman, Health Medical Officer and Assistant Health Medical Officer met in the office of Hon'ble Municipal Commissioner and the following decisions have been taken.

1. No worker working on any Ghanta Gadi shall be removed from the service without leaving the said workman, a cogent reason and without the permission of the Municipal Commissioner.

2. If any Ghanta Gadi is discontinued in any area, on the new Ghanta Gadi i.e. introduced in place of it the same earlier set of workers shall be appointed on the new Ghanta Gadi.

3. Every workmen worksing on Ghanta Gadi shall be paid wages at the rates stipulated under the Minimum Wages Act.

It was also directed by the said Circular that it was obligatory for the contractor to issue hand gloves, gum boots, and masks to the workers working on Ghantagadi project and on the occasion of Diwali every worker who has put in more than 6 months of service would be paid ex-gratia and bonus as per the rules. These directions seem to have only

remained on paper and it is admitted position that the contract workers were not provided with even the basic facilities like handgloves, gum boots and masks.Further in total violation of the Circular, the workers were denied the minimum wages as well as ex gratia and bonus.

5. It seems that one of the primary reasons for issusing the Circular dated 6th November, 2001 by the Corporation was the report dated 15th October, 1998 made by the Asstt.Commissioner of Labour, Nashik in which it was categorically pointed out that Ghantagadi workers are under constant threat of termination of their services because they have been agitating their legal right under the law and if they are not protected it was apprehended that their services will be put to an end. The apprehension expressed by the Asstt.Labour Commissioner proved to be true when without taking prior permission of the Corporation hundreds of workers working under Ghantagadi project who had rendered service for long period were discontinued. It appears that the contractor also failed to make the statutory deductions for Provident Fund. Consequently, the Provident Fund Commissioner has ordered recovery from the contractor.

6. At this stage, we may mention that other writ

petition being Writ Petition No.7006 of 2004 has been filed on behalf of the new workers hired by the contractors for the Ghantagadi project. It is, however, submitted by the Union that these workers have been set up by the contractors to defeat the lawful claim of the petition workers who had worked for more than 7 years. It is also interesting to note that the Advocate on record in Writ Petition No. 7006 of 2004 is also representing the contractor in proceedings before this Court challenging the recovery of Provident Fund. It has also been observed by this Court that the learned Advocate has been taking instructions from the contractor. We find substance in the grievance of the union that Writ Petition No. 7006 of 2004 has been filed at the behest of the contractor. It is also required to be stated that earlier a writ petition was filed by the Union on behalf of workers at Exh.A being Writ Petition No. 3993 of 2001 for recovery of arrears of minimum wages and other dues. This Court vide order dated 5th July, 2004 has referred the matter to the Asstt.Labour Commissioner and directed the Municipal Corporation not to release the amount of security deposit of the contractor till the claims are adjudicated by the Asstt.Labour Commissioner. The petitioner Union has contended and not without sufficient force that these contract workers have rendered

continuous service of more than 7 years and they should be given preference while engagisng the workers under the contract.

7. Our attention was drawn to the order passed by the Division Bench in Notice of Motion No.67 of 1998 in Writ Petition No.1027 of 1997 dated 20th April, 1998. In that case, the Court was concerned with the contract workers working on garbage collection activity of the Mumbai Municipal Corporation. The Divisison Bench directed that if the Corporation desires to invite fresh tenders, it must be subject to condition that the new contractors will employ the same workers and the right of the workmen already accrued will not be affected. It was further directed that even if the new contractors are not available, the Corporation shall get the work done departmentally but only through the contract workers who are already working on the garbage collection work. A direction was also issued that the workers should be provided good quality raincoat with cap, gumboots and handgloves. The Court directed that the Corporation shall ensure that the contractors provide these amenities and if that is not done the Corporation itself should provide the same to the workers. We are informed that the order of this Court was confirmed by the Apex Court and S.L.P.

preferred by Bombay Municipal Corporation was dismissed.

8. Having considered the rival contentions, in our view, the following order shall meet the ends of justice.

i) The Asstt. Labour Commissioner shall prepare a common seniority list of 450 workers as per their seniority subject to condition that the workmen must have been engaged in Ghantagadi activity on 1st July 2003 or thereafter. The workmen whose names are included in the list shall be offered work as per seniority.

ii) The 1st respondent is at liberty to finalise the tenders. However, this must be on the condition that the new contractors engage the contract workers as per the seniority list prepared by the Asstt.Labour Commissioner and any right of the workman already accrued will not be affected. If the new contractors are not available the 1st respondent shall get the work done departmentally but only through the contract workers as per the seniority list prepared by the Asstt.Labour Commissioner.

iii) Looking to the nature of work the workmen should be provided with good quality (a) raincoat with cap, (b) gumboots and (c) hand gloves. It is clarified that it will be for the Nashik Municipal Corporation to ensure, if they can, that the contractors so provide. However, if the Corporation cannot so ensure then the Corporation must so provide themselves.

iv) The contract workers shall be paid the minimum wages as per the Notifications issued by the State Govt. from time to time and the payment shall be disbursed in presence of the officer of the Corporation.

v) On the occasion of Diwali, every worker who has put in more than 6 months of service shall be paid ex-gratia and bonus as per the Circular.

vi). It will be open for the contract workers to produce the proof of their employment in Ghanta Gadi project before the Asstt.Labour Commissioner, Nashik who shall finalise the list of the workers as per their seniority in the light of this order

9. We wish to clarify that we have not expressed any opinion about the claim of permanency of the contract workers and that issue will be adjudicated

on its own merits in the reference pending before the Industrial Tribunal.

10. Writ Petitions are accordingly disposed of.